

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

UNITED STATES OF AMERICA,

Respondent,

V.

CRIMINAL NO. 3:98-00047-01
(CIVIL ACTION NO. 3:06-0109)

KELVIN ANDRE SPOTTS,

Movant.

FINDINGS AND RECOMMENDATION

Kelvin Andre Spotts was sentenced to life imprisonment in February of 1999 following his plea of guilty to multiple counts of an indictment in which he was charged, inter alia, with conspiring to distribute marijuana, cocaine and cocaine base.¹ His conviction and sentence were affirmed on appeal, and a petition for writ of certiorari was denied by the Supreme Court. Spotts v. United States, 530 U.S. 1236 (2000). Since the denial of his petition for writ of certiorari, Spotts has filed two §2255 motions. The initial motion was denied on the merits in September of 2003, and his appeal was dismissed by the Court of Appeals for the Fourth Circuit in February of 2004. The second §2255 motion, filed February 14, 2005, was dismissed as successive in August of 2005 and Spotts' appeal was dismissed by the Court of Appeals on December 1, 2005. Thereafter, on February 14, 2006, Spotts filed his third §2255 motion. Inasmuch as "it plainly

¹ Spotts also received a five-year consecutive sentence for using and carrying a firearm in relation to a drug trafficking crime.

appears from the face of the motion ... and the prior proceedings in the case that the movant is not entitled to relief,”² dismissal without requiring a response from the United States is appropriate.

As was the case with respect to the §2255 motion filed by Spotts in 2005, he has made no showing that he filed an appropriate motion with the Court of Appeals seeking permission to file a successive §2255 motion, and it is apparent that he has not. It is also apparent, for the reasons set forth in the findings and recommendation submitted in Civil Action No. 3:05-0124, that this Court lacks jurisdiction to consider his §2255 motion.³

RECOMMENDATION

On the basis of the foregoing, it is **RESPECTFULLY RECOMMENDED** that the §2255 motion filed by Kelvin Andre Spotts be dismissed with prejudice.

Movant and respondent are hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert C. Chambers, United States District Judge, and that, in accordance with the provisions of Rule 8(b), Rules Governing §2255 Cases, the parties may, within thirteen days of the date of filing these Findings and Recommendation, serve and file written objections with the Clerk of this Court, identifying the specific portions of the Findings and Recommendation to which objection is made and the basis for such objection. The judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and the parties are advised that failure to file timely objections will result in a waiver of their right to appeal from a

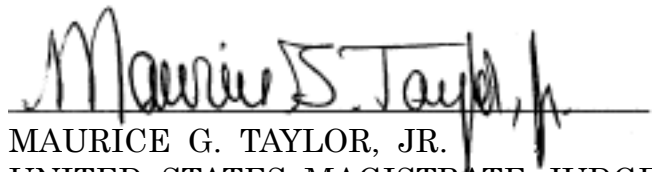
² Rule 4(b), Rules Governing Section 2255 Proceedings for the United States District Courts.

³ See, United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003).

judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Chambers and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and to mail a copy of the same to movant and all counsel of record.

DATED: May 3, 2006

A handwritten signature in black ink, reading "Maurice G. Taylor, Jr.", is written over a horizontal line. The signature is cursive and includes a small flourish at the end.

MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE